

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE UNITED STATES FOR THE USE AND BENEFIT  
OF PLATINUM MECHANICAL, LLC,

Case # 07 civ. 3318

Plaintiff,

-against-

**REPLY TO AMENDED  
COUNTERCLAIM**

UNITED STATES SURETY COMPANY,  
US SPECIALTY INSURANCE COMPANY and  
CFP GROUP, INC.

Defendants.

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Plaintiff, The United States For The Use and Benefit of Platinum Mechanical, LLC (“Platinum”) by its attorneys, Welby, Brady & Greenblatt, LLP, replies to the Amended Counterclaim asserted by CFP Group, Inc. (“CFP”) as follows:

**COUNTERCLAIM**

1. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained within paragraph “1” of the counterclaim
2. Admits the allegations contained within paragraph “2” of the counterclaim
3. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph “3” of the counterclaim.
4. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph “4” of the counterclaim
5. Admits that Platinum was issued certain purchase orders by CFP for performance of work on the Project.
6. Admits that Platinum was issued certain purchase orders by CFP for performance of work on the Project.

7. Denies the allegations contained within paragraph “7” of the counterclaim in the form alleged but admits that the RFP was posted on the referenced website.

8. Admits that the quoted `language contained within paragraph “8” of the counterclaim was contained within the May 15, 2006 letter sent by Platinum to CFP, along with additional language, and begs leave of court to refer to said letter for purposes of completeness and accuracy.

9. Admits the allegations contained within paragraph “9” of the counterclaim

10. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph “10” of the counterclaim.

11. Admits the allegations contained in paragraph “11” of the counterclaim.

12. Denies the allegations contained in paragraph “12” of the counterclaim in the form alleged.

13. Denies the allegations contained in paragraph “13” of the counterclaim in the form alleged.

14. Denies the allegations contained within paragraph “14” of the counterclaim, but admits that a water leak occurred on the Project at some point in time, which leak was not caused by or the responsibility of Platinum.

15. Denies the allegations contained within paragraph “15” of the counterclaim.

16. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph “16” of the counterclaim.

17. Denies the allegations contained within paragraph “17” of the counterclaim.

18. Admits that Platinum received a letter purporting to terminate its services on or about March 19, 2007 from CFP, despite having been barred from the Project and effectively terminated as of March 12, 2007.

19. Denies having knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph "19" of the counterclaim.

20. Denies the allegations contained with paragraph "20" of the counterclaim.

**COUNT I: (BREACH OF CONTRACT)**

21. Responses to paragraph "1" through "20" are incorporated herein as though set forth at length.

22. Admits that certain purchase orders were issued by CFP to Platinum for performance of work on the Project, and begs leave of court to refer to said purchase orders for the terms, conditions and limitations contained therein.

23. Denies the allegations contained with paragraph "23" of the counterclaim.

24. Denies the allegations contained with paragraph "24" of the counterclaim.

25. Denies the allegations contained with paragraph "25" of the counterclaim.

**COUNT II UTICA**

26. Responses to paragraph "1" through "25" are incorporated herein as though set forth at length.

27. Denies the allegations contained within paragraph "27" of the counterclaim and respectfully refers the court to the bond language for terms, limitations and conditions.

28. Denies the allegations contained within paragraph "28" of the counterclaim.

29. Denies the allegations contained within paragraph "29" of the counterclaim.

30. Platinum makes no response to paragraph "30" as same is directed to Utica Mutual Insurance Company.

**FIRST AFFIRMATIVE DEFENSE**

1. Defendant, CFP Group, Inc. has failed to state a claim upon which relief can be granted as against Platinum Mechanical, LLC.

**SECOND AFFIRMATIVE DEFENSE**

2. Defendant, CFP Group, Inc. failed to comply with contractual provisions and as such is precluded from recovery as against Platinum Mechanical, LLC.

**THIRD AFFIRMATIVE DEFENSE**

3. Platinum Mechanical, LLC complied with all project plans and specifications as set forth in the RFP and subsequent addenda.

WHEREFORE, plaintiff, the United States for the use and benefit of Platinum Mechanical, LLC, respectfully demands judgment for the relief sought in the Complaint and as follows:

1. dismissing each of defendant's counterclaims in its entirety; and
2. for such other and further relief as this court may deem just and proper.

Dated: White Plains, New York  
October 4, 2007

WELBY, BRADY & GREENBLATT, LLP

By: \_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATION**

This is to certify that a copy of the foregoing REPLY was mailed on October 4, 2007 to the following:

THOMAS G. DE LUCA  
DE LUCA & FORESTER  
11 Commerce Drive  
Cranford, New Jersey 07016

Dated: White Plains, New York  
October 4, 2007

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/s/  
Paul G. Ryan